No. 89-416

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In The

Supreme Court of the United States

October Term, 1989

LINDA PARTEN,

Petitioner,

vs.

FORD MOTOR COMPANY, a Delaware Corporation, and UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL NO. 1895,

Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(a) Did the Court of Appeals err in its application of *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986), in finding that to be actionable under Title VII, workplace harassment must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment?

(b) Did the Court of Appeals err in finding that prompt remedial action by Respondents which prevented further instances of alleged workplace harassment precluded the finding of a hostile work environment?

RESPONDENTS' RULE 28.1 CERTIFICATION

Ford Motor Company provides the following list of all subsidiaries and affiliates which are believed to have securities in the hands of the public:

Ford Motor Company of Canada, Ltd. (Canada);

Ford Motor Credit Company (Delaware);

Ford International Capital Corporation (Delaware);

Ford International Finance Corporation (Delaware);

Oy Ford AB (Finland);

Ford-Werke AG (Germany);

Ford Motor Company Aktiebolag (Sweden);

Ford Motor Company A/S (Denmark);

Ford Nederland V. B. (The Netherlands);

Ford Motor Company (Belgium) N. V. (Belgium);

First Nationwide Financial Corporation;

United States Leasing International, Inc.;

Autolatina (joint venture with Volkswagen);

Korean Automotive Products Co.;

Aston Martin Lagonda Group Limited;

A C Cars Ltd.;

Mazda Motor Corporation;

Iveco Ford Truck Ltd.

Vehicle Assemblers of New Zealand;

Otosan Otomobile Sanayi A. S.;

RESPONDENTS' RULE 28.1 CERTIFICATION (Cont.)

Kia Motors Corp.;

Versatile Farm Equipment;

The Hertz Corporation;

Fairtel Associates;

Japan Climate Systems;

Ceradyne Inc.;

TG-Ford Associates;

Halla Climate Control Corp.;

Conix/Nascote;

Excel Industries;

New River Castings;

American Cimflex;

Carnegie Group;

General Electric Credit Auto Resale Services, Inc.;

DOBCO; and

Inference Group.

United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local No. 1895 provides the following affiliation:

> International Union, United Automobile, Aerospace & Agricultural Implement Workers of America – UAW

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CONCISE STATEMENT OF THE CASE

A. PROCEEDINGS BELOW.

Petitioner, Linda Parten ("Parten"), seeks review of the decision by the Tenth Circuit Court of Appeals which affirmed the district court's granting of summary judgment in favor of the Respondents, Ford Motor Company ("Ford") and United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 1895 ("UAW") (referred to jointly as "Respondents"), as to Parten's claim of sexual harassment under 42 U.S.C. § 2000(e) *et seq.*

During the proceedings before the district court, Respondents moved for summary judgment as to Parten's claim of sexual harassment on two grounds: (i) the single instance of offensive conduct of which Parten complained, a touching by a co-worker, when viewed in light of all the circumstances of Parten's employment, was not so severe or pervasive as to alter the conditions of her employment or create an abusive work environment; and (ii) neither Ford nor UAW condoned or encouraged the offensive touching by Parten's co-worker, and following the incident Ford took prompt remedial action by suspending the co-worker for two weeks without pay.

The district court concluded, and the court of appeals agreed, that the evidence failed to raise an issue of fact as to whether Parten was the victim of sexual harassment so severe or pervasive as to alter the conditions of her employment or create an abusive work environment. The court of appeals went further and found that the undisputed facts established Ford took prompt remedial action

to prevent any further alleged harassment, thus precluding a finding that a hostile work environment existed.

B. EVIDENCE PRESENTED BELOW.[1]

Respondents believe that Parten's Statement of the Case (Petition for Certiorari, pp. 3-10) is neither accurate nor complete. Thus, Respondents submit the following concise statement of the undisputed facts presented to the courts below.

Parten had been a production worker at Ford's glass plant in Tulsa, Oklahoma for approximately seven years prior to the incident of which she complains. On December 5, 1986, upon arriving at work at approximately 11:00 p.m., Parten was assigned to a work station to clean glass coming off the line. A co-worker, Joe Lundy ("Lundy") walked up behind Parten at her work station and either patted or grabbed her buttocks.[2]

Parten immediately reported the incident to her supervisor and requested that he notify a union representative. Parten was then taken to an office by a shift supervisor and an investigation was commenced. After Parten was

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[1] This evidence was presented by way of admissions in Parten's deposition and affidavits from Ford supervisors and a UAW official who were directly involved in investigating and responding to the incident giving rise to Parten's claim.

[2] Both Parten and Lundy are members of the UAW bargaining unit at the Ford plant.

interviewed, she was advised that a complete investigation would be conducted. She was then allowed to go home, without returning to the job.

Interviews were conducted of the offending co-worker, Lundy, as well as a witness to the incident, and other workers believed to be in the area at the time of the incident. The results of these initial interviews were turned over to a Ford Labor Relations Supervisor. The Labor Relations Supervisor completed the investigation by conducting follow-up interviews with Parten, Lundy and others. Parten was assured during the course of this interview that appropriate disciplinary action would be taken.

The Labor Relations Supervisor found that while there was no dispute that Lundy had touched Parten, there was sharp dispute as to the nature and extent of the touching. Parten maintained that Lundy had forcefully clinched her buttocks, while Lundy was adamant that he merely gave Parten a "coach's pat" so that he could move past her in the confined area adjacent to the production line.

Thus, the Labor Relations Supervisor was required to weigh the statements of the persons involved and make credibility determinations. He believed that discipline should be invoked for the touching, notwithstanding Lundy's assertion that he had merely given Parten a coach's pat. However, the company's disciplinary guidelines required that he consider the employment history, previous disciplinary record, previous work record, and attitude of the offending co-worker in determining appropriate punishment. A review of Lundy's employment file

revealed that he had worked for Ford for approximately 13 years, had absolutely no previous disciplinary record, had excellent attendance, and was considered a competent, hard working employee by his supervisors. Moreover, Lundy appeared to be genuinely apologetic about the incident.

It was therefore decided to give Lundy a two week suspension without pay, which is considered a severe disciplinary measure, placing the offender in danger of termination for any further violation. The UAW elected not to challenge Ford's disciplinary action, as it believed the discipline to be within Ford's rights. The investigation and the subsequent disciplinary action were accomplished within one week after the incident.

While Parten complains of discriminatory treatment over the incident by the UAW, and asserts Lundy's punishment was too lenient, her deposition testimony was that she never again asked for union representation after the single request made at the time of the incident with Lundy, she has no personal knowledge of the UAW's investigation (other than her own interview with UAW representatives), and she never filed a written complaint with the UAW to challenge the UAW's investigation of the incident or UAW's representation of her in the disciplinary proceedings. Nor did she request that the UAW take any action with respect to Ford's discipline of Lundy.

Parten makes other assertions in her Statement of the Case which are incomplete and/or inaccurate.[3] For example, she asserts that, "Ford adjusted the work schedule of

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[3] While Ford does not wish to engage in a point-by-point rebuttal of Parten's assertions, it does believe that certain facts

(Continued on following page)

Lundy and Petitioner so that contact between the two was a necessary job function for the Petitioner" (Petition for Certiorari, p. 9). The undisputed evidence was that following the incident with Lundy, a representative of the Labor Relations Department discussed with supervisors in Parten's area a proposed transfer to allow Parten to be moved to another work area in order that she could have the best possible work environment. He then discussed the matter with Parten and she agreed to the transfer, which occurred soon after the incident. Contrary to her assertions to this Court, Parten testified in her deposition that she presently enjoys a stable work environment, gets along well with her co-workers and supervisors, has no problems at the plant, and that since the incident with Lundy she has not been subjected to any sexual overtures, threats of any kind, or conversations of a sexual nature.

While Parten complains in her Petition for Certiorari that "it is the practice of Ford management to ignore sexual harassment", and that Ford condones sexual antics by employees (Petition for Certiorari, p. 7), there was no evidence presented below to show that Ford management (or the UAW) was made aware of any such conduct. In fact, Parten testified that she has not been personally subjected to such conduct, other than the one incident with Lundy. Moreover, the evidence showed that those employees who have allegedly been subjected to such

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(as found by the courts below) are important to a consideration of the issues presented and must be delineated further. If Parten is merely dissatisfied with the factual findings of the courts below and is seeking yet another review of the facts by this Court, a writ of certiorari is not the appropriate vehicle to accomplish that purpose.

conduct have never made any complaint to Ford management or the UAW.

Additionally, in her Petition for Certiorari, Parten claims that in a "previous incident petitioner had filed a written charge against another supervisor, Doyle Simmons" (Petition for Certiorari, p. 8). Contrary to this assertion, Parten testified that she reported that incident *only* to her union committeeman. Parten admitted that she never reported this incident to Ford management. Her testimony was also that Mr. Simmons never made any sexual overtures towards her, nor did he offensively touch her, and that after the incident he called her into his office to discuss it with her and apologize. She testified that at that point, "I just felt that it was over with", and that she took no other action with respect to that incident. Because of Parten's desire not to pursue the incident further, the UAW took no further action.

Another assertion Parten makes in her Petition for Certiorari is that "other physical conduct between employees at the plant such as fighting resulted in 30 day suspensions or termination." (Petition for Certiorari, pp. 7-8). However, Parten's testimony was of a hearsay conversation with another co-worker. She was never personally aware that such alleged disciplinary measures were actually taken.[4]

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[4] Finally, in her Petition for Certiorari, Parten complains of serious emotional distress and mental suffering following the offensive touching by Lundy, that she has sought medical attention from a physician and psychiatrist for that condition, and that "the psychiatric treatment is attributable to the sexual harassment of petitioner by Lundy" (Petition for Certiorari, pp.

(Continued on following page)

SUMMARY OF ARGUMENT

There are no compelling reasons why this Court should exercise its discretion and review this matter on certiorari. There is nothing unique or unusual about the facts. The issues of law raised in this case are well settled. The Tenth Circuit Court of Appeals, in affirming the district court's order of summary judgment in favor of Respondents, properly applied the standards announced by this Court in *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986).

Relying upon *Vinson*, the court below found that, as a matter of law, the conduct of which Parten complains, while offensive, was not so severe or pervasive as to alter the conditions of her employment or create an abusive working environment. The court also concluded that Ford acted "swiftly and severely" in disciplining the offending co-worker, Lundy, and that Ford and UAW took measures to prevent any further occurrences, thus precluding the finding of a hostile work environment. The undisputed facts supported only that conclusion.

The appellate court also correctly applied its own post-*Vinson* decision, *Hicks v. Gates Rubber Co.*, 833 F.2d 1406 (10th Cir. 1987), and its conclusion is consistent with

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9-10). The evidence fails to support those assertions and conclusions. Parten's deposition testimony was that she had been treated by various psychiatrists and physicians for several years for depression and other symptoms relating to the death of her father, the death of her son, her divorce, and various other personal problems which occurred before the incident with Lundy. The alleged emotional distress and mental suffering is supported *only* by bare assertions by Parten's counsel in various briefs.

decisions by other courts of appeal applying the standards announced in *Vinson*. There is no reason, given the clear standards articulated in *Vinson*, and the faithful application of *Vinson* in this instance, for this Court to grant certiorari.

ARGUMENT – REASONS WHY CERTIORARI SHOULD BE DENIED

"A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Rule 17.1, Rules of the Supreme Court of the United States. This case presents neither compelling or special facts, nor an issue of law which has yet to be decided or needs further delineation. Rather, the facts and law are such that both courts below properly concluded Parten's claim could not survive a motion for summary judgment. There are simply no "special and important reasons" which would compel this Court to exercise its discretion and review the decision of the Tenth Circuit Court of Appeals on writ of certiorari.

A. THE DECISION OF THE COURT BELOW IS IN ACCORD WITH THE APPLICABLE DECISION OF THIS COURT.

In *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986), this Court agreed with decisions by lower courts that, "[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work

environment." *Vinson*, 477 U.S. at 66, 106 S.Ct. at 2405. The Court stated further that:

> Of course, . . . not all workplace conduct that may be described as "harassment" affects a "term, condition, or privilege" of employment within the meaning of Title VII. *See Rogers v. EEOC*, *supra*, at 238 (mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to sufficiently significant degree to violate Title VII); *Henson*, 682 F.2d at 904 (quoting same). For sexual harassment to be actionable, it must be sufficiently severe or pervasive "to alter the conditions of [the victim's] employment and create an abusive work environment." *Ibid.*

Vinson, 477 U.S. at 67, 106 S.Ct. at 2405.

In *Vinson*, plaintiff alleged that she was sexually harassed by her supervisor for approximately 3 to 4 years. *Vinson*, 477 U.S. at 60, 106 S.Ct. at 2402. She alleged that numerous sexual advances were made, and that she had had intercourse with her supervisor 40 to 50 times out of fear for losing her job. *Id.* She claimed to have been fondled repeatedly and forcibly raped by him on several occasions. *Id.* The supervisor had allegedly exposed himself to plaintiff on occasion, and had touched and fondled other female employees. *Id.* This Court found that, "Respondent's allegations in this case – which include not only pervasive harassment but also criminal conduct of the most serious nature – are plainly sufficient to state a claim for "hostile environment" sexual harassment. 477 U.S. at 67, 106 S.Ct. at 2405-06.

In stark contrast, the evidence in this case is of a single incident where a co-worker either patted or

grabbed Parten's buttocks. The co-worker was dealt with "swiftly and severely", as the court below found, with a two week suspension and a disciplinary mark on his work record. (Order and Judgment, p. 2). When considered with the other (alleged) circumstances of Parten's employment addressed by the court of appeals, including certain comments to Parten by a supervisor about her sex life with her husband,[5] and sex-related horseplay between other employees,[6] there are no facts even remotely similar to those presented in *Vinson*.

The court below found that the evidence in the record simply failed to meet the standard articulated in *Vinson*. The court held:

> We agree with the district court that to be actionable under Title VII, sexual harassment must be "severe," "pervasive," and it must result in the alteration of the conditions of the victim's work environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); *Hicks v. Gates Rubber Co.*, 833 F.2d 1405 (10th Cir. 1987). Neither of the incidents which personally involved the plaintiff could be described as "pervasive," nor was plaintiff's working environment adversely affected as a consequence of offensive conduct.

(Order and Judgment of Tenth Circuit Court of Appeals, dated June 9, 1989, p. 3; Petition for Certiorari, Appendix A, p. A-5). The court correctly determined there was no

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[5] Parten never reported that incident to Ford management and after speaking with the supervisor, the supervisor apologized to her and therefore she "felt that it was over with".

[6] Parten was not directly subjected to such conduct, and no employee, including Parten herself, complained to Ford management or UAW about it.

issue of fact as to whether Parten was subjected to sexual harassment so severe or pervasive to alter the conditions of her employment or create an abusive working environment.

B. THE TENTH CIRCUIT PROPERLY APPLIED ITS PREVIOUS POST-*VINSON* DECISION.

The court of appeals' decision is consistent with its own previous post-*Vinson* decision on sexual harassment, *Hicks v. Gates Rubber Co.*, 833 F.2d 1405 (10th Cir. 1987). In *Hicks*, the plaintiff was a security guard who alleged that workplace harassment by her co-workers and her supervisor gave rise to a claim under Title VII for sexual harassment (as well as racial discrimination).

The plaintiff in *Hicks*, a security guard, alleged that she was harassed throughout her probationary employment period. She claimed that her supervisor and others called her "Buffalo Butt" and made other sexual and racial comments to her. She further claimed that her supervisor refused to allow her to sit while on duty or to give her a lunch break when required, offensively touched her on several occasions (grabbed her thighs, touched her buttocks, grabbed her breasts and fell on top of her), and used rough language in her presence. *Hicks*, 833 F.2d at 1409-10. She also claimed that the supervisor had sexually harassed other employees. *Id.*

Contrary to Parten's assertion in her Petition for Certiorari that in *Hicks* there was a "finding of a hostile environment" (Petition for Certiorari, pp. 17-18), the court found *only* that the district court erred in failing to recognize the existence of a cause of action for sexual

harassment based upon the creation of a hostile work environment. *Hicks*, 833 F.2d at 1414-16. The court concluded that plaintiff stated a claim for relief, and that, "without expressing any view on the merits of the ultimate determination that should be made on the hostile work environment sexual harassment claim of Hicks, that claim is remanded to the district court for reconsideration." *Id.*, at 1417.

Thus, there was no finding in *Hicks* that sexual harassment did exist. Rather, the case was remanded so that the district court could review the evidence under the standard laid down in *Vinson:*

> . . . [H]ostile work environment harassment arises when sexual conduct "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." *Vinson*, 477 U.S. at ___, 106 S.Ct. at 2405, *quoting* 29 C.F.R. § 1604.11(a)(3) (1986). "For [hostile work environment] sexual harassment to be actionable, it must be sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.' " *Vinson*, at ___, 106 S.Ct. at 2406, *quoting Henson*, 682 F.2d at 904.

Hicks, 833 F.2d at 1413.

In the present case, the court below faithfully applied this standard in finding that, upon an examination of the totality of the circumstances, no fact question existed as to whether the conduct complained of was so severe or pervasive to alter the conditions of Parten's employment or create an abusive working environment.

C. THE DECISION OF THE COURT BELOW IS CONSISTENT WITH THE VIEW OF OTHER COURTS OF APPEAL APPLYING *VINSON*.

Other courts of appeal have considered a number of sexual harassment cases involving an alleged hostile work environment since *Vinson*. In *Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986), *cert. denied*, 481 U.S. 1041, 107 S.Ct. 1983, 95 L.Ed.2d 823 (1987), plaintiff alleged hostile work environment sexual harassment based upon the conduct of a company supervisor, described as "an extremely vulgar and crude individual who customarily made obscene comments about women generally, and on occasion, directed such obscenities to the plaintiff." *Rabidue*, 805 F.2d at 615. Plaintiff and other female employees were offended by the behavior of the supervisor. *Id.*[7]

Plaintiff also alleged that male employees displayed pictures of nude or scantily clad women to which plaintiff and other female employees were exposed, and that plaintiff repeatedly filed written complaints on her behalf and on behalf of others regarding this conduct. *Id.* Plaintiff also claimed that she was not given the same perks as male employees (e.g., free lunches, free gasoline, a telephone credit card, not invited to weekly golf matches). *Id.*, at 624. The Sixth Circuit found that such offensive verbal harassment and abuse was not so severe or pervasive as to constitute sexual harassment actionable under Title VII. *Id.* This Court denied certiorari.

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[7] The vile, demeaning and sexually explicit epithets the supervisor routinely used when referring to women are set out in the court's opinion. (*See* dissenting opinion, 805 F.2d at 624).

In *Scott v. Sears, Roebuck and Co.*, 798 F.2d 210 (7th Cir. 1986), the plaintiff was an auto mechanic who alleged hostile work environment sexual harassment by her supervisor and co-workers. She alleged that a senior mechanic assigned to give her job training "repeatedly propositioned her, would wink at her and also suggested he give her a rub down." *Scott*, 798 F.2d at 211. When plaintiff asked for assistance he would reply, "What will I get for it?" *Id.* Plaintiff also alleged that another mechanic slapped her buttocks, while another "told her he knew she must moan and groan while having sex." *Id.*, at 211-12. The Court found that such conduct was insufficient to establish a hostile work environment. *Id.*, at 213-14.

In *Jones v. Flagship International*, 793 F.2d 714 (5th Cir. 1986), *cert. denied*, 479 U.S. 1065, 107 S.Ct. 952, 93 L.Ed.2d 1001 (1987),[8] plaintiff testified that her supervisor "subjected her to sexual harassment throughout her tenure", propositioned her on business trips and made numerous other advances to her, *Jones*, 793 F.2d at 716. Plaintiff also alleged that the company's chief executive officer, at a company Christmas party, "created figures of bare-breasted mermaids as table decorations". *Id.*, at 716-17. After that incident, plaintiff submitted a written complaint on behalf of herself and other female employees. *Id.*, at 717. The CEO replied to the written complaint in such a manner as to show he was "obviously unrepentent." *Id.* The Fifth Circuit found plaintiff's allegations insufficient to state a claim of sexual harassment. *See also Highlander v. K.F.C. National Management Co.*, 805 F.2d 644, 646-47, 650 (6th Cir. 1986) (plaintiff's allegations that a

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[8] *Jones* was decided approximately three weeks after *Vinson*; however, the Fifth Circuit did not cite to or discuss *Vinson*.

supervisor touched her legs, buttocks and breast and a co-worker's buttocks, and propositioned her, and that crude sexual comments pervaded her work environment, held insufficient).

The decision of the court below is consistent with the above decisions of other courts of appeal which involved similar (albeit more severe) instances of alleged harassment. In each instance, as here, the court applied the proper standard and concluded that the conduct did not rise to an actionable level.

In other instances, courts have found, as did the court below, that prompt remedial action on the part of an employer which halts the alleged harassment precludes the finding of a hostile work environment. In *Swentek v. USAir, Inc.*, 830 F.2d 552 (4th Cir. 1987), plaintiff was a flight attendant who alleged that a co-worker (a pilot) exposed himself to her, grabbed her genitals, made offensive comments to her, propositioned her, made obscene phone calls to her, and engaged in other sexually offensive conduct. *Swentek*, 830 F.2d at 556-58. After plaintiff notified management, it investigated and issued a written reprimand to the offending co-worker. *Id.*, at 558. While management chose to discount some of plaintiff's allegations and disbelieve others, its conduct in investigating and carrying out discipline precluded the finding of a hostile work environment. *Dornhecker v. Malibu Grand Prix Corp.*, 828 F.2d 307, 309-10 (5th Cir. 1987).

Even the authorities cited by Parten in her Petition for Certiorari support this position. For example, in *Barrett v. Omaha National Bank*, 584 F.Supp. 22 (D. Neb. 1983),

aff'd, 726 F.2d 424 (8th Cir. 1984), plaintiff and two male supervisors were on a trip in a rented automobile to attend a banking seminar. All three were in the front seat of the automobile, with plaintiff seated in the middle. Plaintiff alleged that one of the males began rubbing her thighs and pressing against her breast, and grabbed her crotch. *Barrett*, 584 F.Supp. at 23-24.

Plaintiff further alleged that she told the other male of the offensive conduct during a stop on the trip but that no action was taken. *Id.*, at 24. Once they reached their destination and checked into the hotel, plaintiff alleged, the two men entered plaintiff's room, sat on her bed and made "lewd sexual comments." *Id.* Plaintiff further alleged that the next day, during the seminar, the same male continued his physical conduct by putting his hand on plaintiff's thigh and rubbing against her breasts. *Id.*, at 25. After the seminar plaintiff reported the incident to another supervisor. An investigation was performed and each of the male employees was reprimanded. *Id.*, at 26. The district court found that no Title VII claim would lie because the bank took prompt remedial action to ensure that no further harassment would occur. *Id.*, at 30-31. The Eighth Circuit Court of Appeals affirmed. 726 F.2d at 427.[9]

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[9] Parten's Petition for Certiorari cites to an EEOC Notice issued on October 25, 1988 which states that *Barrett* stands for the proposition that "one incident constituted actionable sexual harassment", and that in the one incident "the harasser talked to the plaintiff about sexual activities and touched her in an offensive manner while they were inside a vehicle from which she could not escape." (Petition for Certiorari, p. 22). The EEOC's interpretation of *Barrett* is not entirely accurate, to say the least. *See Barrett*, 584 F. Supp. at 23-26.

Similarly, in *Carrero v. New York City Housing Authority*, 668 F.Supp. 196 (S.D.N.Y. 1987) (Petition for Certiorari, p. 18), the court found that plaintiff's supervisor created a hostile work environment for her where he engaged in a pattern of harassment which included offensive touching of plaintiff's knee, arm and shoulder, kissing plaintiff on the neck (on at least two separate occasions), attempts to kiss her on a number of other occasions, and demeaning verbal abuse of her. However, the court found that her employer was not liable for such harassment because it promptly investigated and took remedial action (an investigation was conducted, though the supervisor was *not* disciplined). *Carrero*, 668 F.Supp. at 199-200, 202.

Here, the court of appeals concluded that Ford acted "swiftly and severely," in disciplining Lundy, that Respondents "took reasonable and immediate action" to protect the "work environment of Parten" and to insure that this or a similar incident" would not occur in the future, and that "[a]s a consequence, plaintiff has no legitimate Title VII Claim". (Order and Judgment of June 9, 1989, pp. 2, 3-4) (Petition for Certiorari, Appendix A, pp. A-3, A-6). This view is wholly consistent with the view of other courts.

D. THE CASES CITED BY PARTEN FAIL TO SUPPORT HER PROPOSITION THAT THE COURT BELOW ERRED IN ITS APPLICATION OF *VINSON*.

The cases cited by Parten in her Petition for Certiorari, which she claims found actionable sexual

harassment, are either distinguishable from the instant case or fail to support Parten's assertions. Unlike the facts presented here, those cases involved conduct occurring over a substantial period of time which was extremely severe in nature, and often supervisory personnel were well aware of the conduct or in fact participated in it.

For example, in *Hall v. Gus Construction Co.*, 842 F.2d 1010 (8th Cir. 1988) (cited by Parten at p. 19 of Petition for Certiorari), the evidence showed that, "Immediately after the women started work, male members of the construction crew began to inflict verbal sexual abuse upon the women." *Hall*, 842 F.2d at 1012. These male employees called the women a variety of extremely offensive, vulgar, and sexually degrading names, and propositioned them for sexual favors using the most vile of terms. *Id.*

The court found that the construction crew foreman was present during much of this conduct, and that one plaintiff had informed him that such conduct was offensive to the women. Plaintiffs also complained of offensive and unwelcomed physical abuse, such as the grabbing of their thighs and breasts. *Id.* Also, male workers pulled their pants down and "mooned" the women, flashed pictures of naked couples engaged in oral sex, one worker exposed himself, and others engaged in similarly distressing conduct. *Id.* Thus, because of the severity and sustained nature of the conduct and the fact that management had been made aware of it on several occasions, the employer was liable for harassment.

In *Moylan v. Maries County*, 792 F.2d 746 (8th Cir. 1986) (Petition for Certiorari, pp. 19-20), plaintiff was a

dispatcher in a sheriff's office who was allegedly subjected to "numerous sexual advances" by the sheriff, which included fondling and putting his arms around plaintiff. *Moylan*, 792 F.2d at 749. On one occasion, the sheriff was alleged to have forcibly raped the plaintiff. *Id.*, at 747-48. The court found such conduct sufficient to state a claim for sexual harassment under Title VII. *Id.*[10]

In *McKinney v. Dole*, 765 F.2d 1129 (D.C. Cir. 1985) (Petition for Certiorari, p. 18) plaintiff's supervisor exposed himself to plaintiff, rubbed against her, verbally abused her, and allegedly assaulted her, and the supervisor's supervisor also engaged in similar conduct. The court concluded that Title VII liability could be imposed upon the employer.

In *Katz v. Dole*, 709 F.2d 251 (4th Cir. 1983) (Petition for Certiorari, p. 19), plaintiff's workplace was "pervaded with sexual slur, insult and innuendo," plaintiff was the repeated object of verbal sexual abuse, there were "extremely vulgar and offensive sexually related epithets" to and about plaintiff by supervisors and others, and a sexual advance by a co-worker, reported to supervisor, went unpunished and in fact the supervisor

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[10] However, in *Staton v. Maries County*, 868 F.2d 996 (8th Cir. 1989) the court affirmed the district court's granting of judgment in favor of the employer and the sheriff against the plaintiff (whose name had changed from Moylan to Staton in the intervening period). The court declined to reconsider the district court's credibility determinations against plaintiff, and further found that while an *act of intercourse had occurred* and affected plaintiff's "psychological well-being", it "was not so pervasive as to alter the conditions of [plaintiff's] employment". *Staton*, 868 F.2d at 998.

told plaintiff the problem would go away if plaintiff "submitted to" the co-worker. *Katz*, 709 F.2d at 254. The allegations were held sufficient to state a claim. *Id.*, at 256.

In *Henson v. City of Dundee*, 682 F.2d 897 (11th Cir. 1982) (Petition for Certiorari, p. 20), the court held plaintiff established a *prima facie* case by alleging "numerous harangues of demeaning sexual inquiries and vulgarities" by her supervisor, demands by her supervisor that she engage in sexual relations with him, numerous other sexual advances by her supervisor and almost daily verbal sexual abuse, and that while plaintiff informed the supervisor's supervisor, he took no steps to halt the abuse. *Henson*, 682 F.2d at 899-900.

In sum, unlike the circumstances here, involving a single incident of offensive conduct which was immediately rectified, the cases cited by Parten show a common theme, in that both verbal and physical abuse (i) repeatedly occurred over a prolonged period of time, (ii) was often directed by the plaintiff's supervisor, and (iii) remained uncorrected despite being brought to the attention of management. Parten's attempt to liken the circumstances of those cases to hers clearly misses the mark.

CONCLUSION

There are no considerations which would weigh in favor of granting certiorari to review the decision of the court below, and certainly none which could possibly be considered "special" or "important." The facts of this case are unremarkable and the court below faithfully followed applicable precedent. The Petition for Certiorari should be denied.

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